



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Mobile Medic Ambulance Service, Inc.--
Reconsideration

File: B-251545.2

Date: March 26, 1993

Charles D. Porter, Esq., Phelps Dunbar, for the protester.
Andrew T. Pogany, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Where solicitation does not impose a specific license requirement, agency may make award without regard to whether contractor is licensed under state or local laws.

DECISION

Mobile Medic Ambulance Service, Inc. requests reconsideration of our December 16, 1992, dismissal of its protest concerning the award of a contract for basic and advanced life support ambulance services and invalid transport services to J&R Ambulance Service, Inc. under request for proposals (RFP) No. 93-R-0002, issued by the U.S. Naval Home, Gulfport, Mississippi. We dismissed the protest because we concluded that it challenged the Naval Home's affirmative determination of J&R's responsibility as a prospective contractor--its compliance with state and local licensing laws under a general solicitation provision requiring the contractor to obtain all necessary licenses.

We deny the request for reconsideration.

According to the protester, the RFP, issued on October 22, 1992, was twice amended. Amendment No. 1, issued October 29, added a provision requiring the contractor to obtain all appointments, licenses and permits to perform the work under the proposed contract and to "comply with all applicable federal, state and local laws." Evidence of such permits and licenses was required to be provided to the contracting officer "before award/at other times after award," as requested by the contracting officer. The protester states that amendment No. 2, issued November 10, deleted the requirement that the contractor comply with local laws and provided that "[e]vidence of . . . permits

and licenses shall be provided to the contracting officer after award." The Naval Home subsequently made award to J&R on November 20.


In its initial protest, Mobile argued that ordinances containing the licensing requirements of Harrison County (the place of performance under the contract) require that any ambulance service which originates within the county must be licensed by the county. Mobile argued that the Naval Home's attempt to delete the requirement that the contractor comply with local laws was ineffective because applicable Mississippi state law also requires that the ambulance service contractor comply with local (county) law. Mobile also argued that the awardee, J&R, lacked a valid license and was therefore not a responsible prospective contractor because local authorities "may" prevent performance of the contract. Finally, Mobile argued that our review of this licensing issue was appropriate because "there has been no affirmative determination of responsibility since J&R has not obtained the required licenses [and] has not complied with the definitive responsibility criteria [contained in the solicitation]." In its reconsideration request, Mobile repeats these arguments.

Generally, a solicitation provision that requires a contractor to possess a specific license is a definitive responsibility criterion, compliance with which is a necessary prerequisite to contract award. See S.A.F.E. Export Corp., B-213027, June 27, 1984, 84-1 CPD ¶ 675. Where, however, the solicitation contains only a general licensing requirement, the contracting officer is free to make award without regard to whether the contractor is licensed under local law. Cadillac Ambulance Serv., Inc., B-220857, Nov. 1, 1985, 85-2 CPD ¶ 509. Thus, where a solicitation required that the contractor obtain all necessary licenses and permits for the state of Texas, we found the requirement to be a general one and not a matter the contracting officer needed to consider in making the contract award. New Texas Corp., B-216813, Nov. 6, 1984, 84-2 CPD ¶ 509.

Here, the RFP licensing provision was a general licensing requirement only. It did not require any specific license as a prerequisite to award. By its specific terms, the provision required evidence of compliance only after award. Therefore, the license provision was a general requirement, and compliance is a matter to be resolved by the contractor and the state or local authorities. See Mid-South Ambulance Corp., B-214078, Jan. 30, 1984, 84-1 CPD ¶ 133. Since the provision did not involve a definitive responsibility criteria, J&R's ability to obtain all necessary permits and licenses was encompassed by the agency's affirmative

determination of its responsibility. Contrary to the protester's assertion, the award of the contract to J&R constituted an affirmative determination of responsibility. The Pratt & Whitney Co., Inc.; Onsrud Mach. Corp.--Recon., B-232190.3; B-232190.4, Sept. 27, 1989, 89-2 CPD ¶ 275. We do not review an agency's affirmative determination of a contractor's responsibility absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. See 4 C.F.R. § 21.3(m)(5) (1992). No such showing has been made.¹

Our dismissal is affirmed.


for James F. Hinchman
General Counsel

¹Mobile also argues that J&R's offer was "nonresponsive." Mobile argues that state law, compliance with which is required by the RFP, requires compliance with local county law which, in turn, allows only the furnishing of advance life support ambulance services rather than the basic life support ambulance services and invalid transport services called out by the solicitation. Specifically, according to the protester, the county requires that every response to a request for ambulance service must be made only at the advance life support level of clinical quality. Since J&R's offer included the furnishing of basic life support ambulance services and invalid transport services, the protester argues that J&R's "bid" was nonresponsive. The concept of "responsiveness," however, only applies to sealed bidding. See Century Indus., Inc., B-197302.2, May 21, 1981, 81-1 CPD ¶ 397. Here, the Naval Home issued a competitive negotiated solicitation, and, as stated above, the provision concerning compliance with state law related to the responsibility of offerors, not to the acceptability of their proposals.